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A REPORT OF INTERIM ACTIVITY . . . MONTANA LEGISLATIVE COUNCIL . . . HELENA

August 1987 Vol. VI No. 3

Environmental Quality Council

Forest Management/Watershed Study

The Environmental Quality Council will meet Sept. 14-15 to begin detailed consideration of the issues raised by HJR 49, which calls for an interim study of forest management/watershed relationships in Montana.

The Monday, Sept. 14, session will begin at 9:30 a.m. at the headquarters of the University of Montana's Lubrecht Experimental Forest, located about 40 miles east of Missoula on Highway 200, and will consist of presentations and panel discussions on timber harvest practices, watershed effects, the legal and administrative structure governing forest management activities in Montana, efforts of neighboring states to address forest watershed issues and perspectives of various Montana participants in the issue.

On Tuesday, Sept. 15, the EQC will tour several completed logging operations in the Missoula area. The tour will depart from Missoula.

Legislators or interested persons who wish to attend some or all of the two-day meeting should contact EQC for more detailed information on meeting and tour arrangements.

Also, legislators or interested persons who have not received mailings from EQC on HJR 49 and wish to be placed on the HJR 49 mailing list should write to EQC or phone 444-3742.

Legislative Audit Committee

The next meeting of the Legislative Audit Committee is scheduled for Friday, Sept. 18.

The agenda for the meeting has not yet been set.

Legislative Council

Actions at July 8 Meeting

- The Legislative Council, at its July 8 meeting
- set the retail sales price of the 1987 Montana Code Annotated Statute Text at \$210, based on a cost of \$185 per set. The latter will be the cost to public agencies;
 - approved an operating budget for the Interim studies and conferences and reimbursable activities (special revenue) programs;
 - authorized delegates to the Five-State Conference to invite the Conference to Montana in 1989;
 - approved a proposal by Hank Trenk to authorize as many of the Legislative Services Division staff as possible to attend the Data Retrieval User Group meeting in Salt Lake City. Funding is to remain within budget. The Council does not want anyone required to attend to have to pick up any official business costs on their own;
 - authorized staff to survey the uses to which free distribution of legislative proceedings are put and to determine whether the free distribution list can be altered to save costs while still

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providing sufficient access to legislative information;

- continued the policy that the council chairman review legislative travel claims for reasonableness. Revised the policy regarding out-of-state travel to high-cost cities such that claims for lodging will be limited to \$85 plus tax unless prior approval has been granted by the council chairman. Prior approval is to be based on the unavailability of reasonable accommodations within the \$85 limit;
- authorized the director to work with the chief clerk of the House to develop information and options relative to problems with the production and content of legislative committee minutes;
- adopted the following policy with respect to redos of bill drafts.

A requestor is entitled to submit a bill draft to the Legislative Council drafting staff for correction or minor alteration one time under the original request priority. To receive the priority of the original draft under this policy, the bill and the information required to make the corrections must be submitted to the drafter within 14 calendar days of delivery to the legislator before the session begins and within seven calendar days (or 48 hours after deadline) after the session begins. Redrafts requested after these deadlines and redrafts requested after the first redraft will be treated as new drafting requests with regard to priority and moved to the bottom of the drafter's priority list. Corrections of obvious clerical errors are not covered by this policy.

By consensus, there was agreement to continue the rule that the first bill requested was to be the first worked on. This policy may be altered to allow for some prioritization of bills that have earlier transmittal deadlines than others when deadlines are approaching;

- authorized the staff to look into ways to improve the legislative intern program and to report back to the council;
- directed staff to inform the Governor's office and other involved persons about the problem with the period of time allowed for signing bills after a legislative session and to invite comment on the issue at the next council meeting. This includes both a possible constitutional amendment on the number of days available to the Governor and the possibility of a statutory limit on the number of days for conducting a veto poll;
- appointed Bob Person as executive director and Greg Petesch as code commissioner, removing the acting status of the previous appointments. Decided to fill the position of research director based upon applications accepted from in-house applicants. Determined that specific authority from the council was required to fill a vacancy on staff and deferred

- a decision on whether to grant authority to fill the researcher vacancy until the next meeting;
- agreed that the chairman has the authority to appoint Rep. Dave Brown and Rep. Bob Marks to attend committees of the NCSL as official delegates when they are able to do so. The state will assume no additional financial obligation as a result of such designation;
- asked the executive director for a summary outlining staff's duties during the interim in order to help answer questions such as, "What do they all do when the Legislature is not in session?"; and
- tentatively set the next meeting for Saturday, Sept. 12

House Interim Appointments

Speaker Bob Marks announced the appointment of these members to serve on various interim activities:

Joint Interim Subcommittee on Basic Education:

Rep. John E. Phillips
Rep. Jack Sands
Rep. Ted Schye
Rep. Barry (Spook) Stang

Joint Interim Subcommittee on Welfare

Reform:

Rep. Dorothy Bradley
Rep. Tom Bulger
Rep. Budd Gould
Rep. Larry Menke

Five-State Legislative Conference

An informal organization consisting of delegates from the legislatures of Montana, Nebraska, North Dakota, South Dakota, and Wyoming, the Five-State Legislative Conference meets biennially to facilitate cooperation, consultation, and exchange of information in state affairs of common concern. The conference has created a livestock task force and a water task force to address issues in these areas.

The Montana members of the conference designated by the Legislative Council are:

Sen. H. W. "Swede" Hammond
Sen. Bill Farrell
Sen. Ted Neuman
Rep. Bob Pavlovich
Rep. Ray Peck
Rep. Jack Sands
Rep. Dean Switzer

Legislative Publications

Deliveries Begin

The first publications from the 50th Legislature appeared when legislators and subscribers received the *Legislative Review and History* and *Final Status* during July

Laws of 1987 is scheduled for shipment during the week of August 17.

House Journal and Senate Journal are expected to reach subscribers before the end of September

Earliest MCA Delivery Expected

Montana Code Annotated camera-ready copy is being sent to the printer on a volume-by-volume basis now. Barring unforeseen complications or delays, the code commissioner anticipates the earliest publication date in the history of the MCA.

The code commissioner wishes to thank and congratulate the following people who worked so diligently since the 50th Legislature adjourned to make this early publication possible.

Dave Cogley, Lee Heiman, Valencia Lane, Jim Lear, John MacMaster, Mary McCue, Eddy McClure, Doug Sternberg, Hank Trenk, Marilyn Novak, Mary Ellen Randall, Carol Ann Jacobsen, Connie Dixon, Kevin Hayes, Phyllis Cote, Marie Fuhrmann, Sally Bush-Arrigo, Ann Sigouin, Jesse Northerner, and Kathy Thompson

Initiative Reviewed

- Constitutional Amendment Limiting Total State Tax Collections - Ramirez

Referendum Reviewed

- Petition to Refer to the People SB 161 Extending the Terms of Two Associate Justice Positions on the Supreme Court

Library Services

The Legislative Council library receives copies of all NCSL publications. These include the State-Federal Issue Briefs, Legislative Finance Papers, and the Legislator's Guide series of monographs. Recent titles include:

- Pierce, R. *Long-term Care for the Elderly: a Legislator's Guide* 1987.
- Gold, S. *State Fiscal Conditions* 1987 (Legislative Finance Paper #55)
- Felde, J. *Legislator's Tax Home*. 1987 (State-Federal Issue Brief)

If you would like to borrow these or other publications, call the library at 444-3064

Coal Tax Oversight Subcommittee

Officers Elected

At its organizational meeting on July 10, the Coal Tax Oversight Subcommittee elected Representative Tom Asay and Senator Bill Yellowtail chairman and vice chairman, respectively

Activities Planned

In laying out a work schedule for the 1987-1988 interim, the Subcommittee:

- set meetings tentatively for Sept. 11 and Dec. 11, 1987, Feb. 5, April 15, June 17, and Aug. 26, 1988 (all Fridays) with the Dec. 11, 1987, meeting to be held in Billings.
- instructed the staff to begin preparation of a comprehensive handbook on history and background of the coal severance tax to provide members of the 51st Legislature a ready reference source of facts on the coal industry in Montana and its tax environment and its relationship to other states;
- authorized the chairman to approve expenditure from the Subcommittee's budget for expenses of members to meetings of the Coal Board and other related activities;
- asked staff to prepare for each meeting a status report on the severance tax and on coal production; and
- asked staff to report at the next meeting on the impact of federal taxes, royalties, and other costs on the Montana coal industry.

Next Meeting Sept. 11

The Subcommittee will meet next at 10 a.m. Friday, Sept. 11 in Room 108 of the Capitol.

Revenue Oversight Committee

Next Meeting September 11

The Revenue Oversight Committee did not meet in July and will not meet in August. However, the Committee's staff is compiling information on HJR 48, the property reappraisal study, and on HJR 56, the gasoline license tax collection study.

The next meeting of the Committee is scheduled for Friday, Sept. 11, 1987, at 9 a.m. in Room 104 of the Capitol

Water Policy Committee

Water Rights Consultant Selection

The Water Policy Committee has set Sept. 1 as the deadline for proposals for a study of the water rights adjudication process. A task force will evaluate the applications on Sept. 4 and recommend no more than five consultants for consideration by the Water Policy Committee. The committee will interview applicants on Sept. 10 and will select a consultant on Sept. 11.

Other topics to be addressed at the Sept. 10-11 meeting tentatively include water development and a discussion concerning the public trust doctrine and Montana's prior appropriation laws. HJR 59, which encourages further study of reservoir sites near Billings for recreation benefits, will be included in the water development discussion

Western States Legislative Forestry Task Force

Alberta to Become Member

The Province of Alberta will become a dues-paying, nonvoting associate member of the Western States Legislative Forestry Task Force when the group meets in Edmonton Sept. 18-20. The affiliation will give Alberta the same status as British Columbia and will extend the working relationship to all the timber-producing provinces of western Canada and states of the northwestern United States

Resolutions Adopted

During the June meeting in Missoula, the Forestry Task Force adopted resolutions:

- opposing further restriction and special land classification of U.S. Forest Service and Bureau of Land Management lands near Yellowstone National Park; and
- urging Congress to provide a vigorous Forest Service timber sales and road access program at least equal to the present and projected harvest level

Due Date for Super Collider - Bids Postponed One Month

The U. S. Department of Energy has extended for one month the Aug. 3 deadline for submission of proposals for the location of the \$4.4 billion superconducting super collider research facility.

Representative John Vincent, a member of the task force charged with preparing Montana's bid, said the state's proposal was ready for the Aug. 3 deadline, but the additional month will be utilized to fine tune the proposal, especially in regard to land acquisition. Other elements of Montana's offering are being refined to further improve the state's prospects of success and to make Montana's top-flight proposal even better

Working to Montana's advantage in the competition is the Domenici amendment which prohibits any state from offering a cash inducement.

Representative Vincent has been polling legislators to determine if an appropriation to purchase land necessary for the project would be approved if Montana's proposal is accepted.

Friday, July 31, and Thursday, Aug. 13, are the dates for the final two meetings of the task force. The Montana proposal will be finalized at the latter meeting starting at 1 p.m. in the Governor's Reception Room of the Capitol.

The task force believes that Montana's proposed site in Comanche Basin about 15 miles northwest of Billings is in many regards the best in the nation. The location within 15 minutes driving time of a major airport and other metropolitan facilities combines with considerations of climate and availability of high quality work force as strong factors in Montana's favor.

Lottery Liaison Committee

Members Appointed

A four-member Legislative Liaison Committee for the Montana Lottery was created in House Bill 374, Chapter 161, Laws of 1987, which amended provisions for the Montana Lottery approved by the people in November 1986. The legislative liaison committee will meet annually with the Lottery Commission and report to each Legislature on the activities and operations of the state lottery.

Members appointed by the Senate Committee on Committees are:

- Sen. Lawrence G. Stimatz
- Sen. Larry J. Tveit

Members appointed by the Speaker of the House are:

- Rep. Budd Gould
- Rep. John Vincent

Tort Reform Bills Enacted

Valencia Lane, staff attorney, summarized significant tort reform legislation passed by the 50th Legislature (with Chapter numbers in the 1987 Session Laws):

- HB 167 (Gilbert) Chapter 488:

Prohibits recovery of damages for emotional or mental distress arising from a contract, except in those actions involving actual physical injury to the plaintiff. (Eff. Oct. 1, 1987)

- HB 240 (Thomas) Chapter 278:

Establishes independent cause of action by an insured or third-party claimant against an insurance company. Eliminates any action by an insured against an insurance company for bad faith

handling of a claim (an insured can sue for breach of contract or fraud). Third-party claimant cannot file an action until the underlying claim has been settled or judgment entered in behalf of the claimant on the underlying claim. (Eff. July 1, 1987)

- **HB 241 (Spaeth) Chapter 641:**

Limits wrongful discharge actions and the recovery available in such actions. Provides that a discharge is wrongful only if:

- 1) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy;
 - 2) the discharge was not for good cause and the employee had completed his probationary period; or
 - 3) the employer violated an express provision of its own written personnel policy.
- "Good cause" includes any legitimate business reason, whether related to the employee's performance or not. Damages recoverable in any wrongful discharge suit are limited to four years' lost wages and fringe benefits, plus interest, less any earnings that the employee could have earned with reasonable diligence. Punitive damages are allowed in cases of actual fraud or actual malice involving dismissal for refusal to violate public policy or for reporting a violation of public policy. No other damages are allowed. One-year statute of limitations. Allows parties to submit dispute to binding arbitration. The bill does not apply to persons covered by a collective bargaining agreement or a contract of employment for a specific term. (Eff. July 1, 1987)

- **HB 344 (Asay) Chapter 499:**

Changes statute of limitations for bringing a medical malpractice lawsuit for injuries to a minor under the age of four at the time of injury. Under this bill, the standard three-year time limit begins to run when the child reaches the age of eight years (so that such action must be commenced on or before the child's 11th birthday). This is a change from current law under which the time limit begins to run on a child's 18th birthday (+ 3 years = until age 21 to bring a lawsuit). The bill applies to injuries or death occurring before Oct. 1, 1987, and such actions must be brought by Oct. 1, 1989, or within above time limits, whichever comes first.

- **HB 442 (Mercer) Chapter 627:**

Restricts awards of punitive damages in contract-related cases. Reasonable punitive damages allowed for actual fraud or actual malice [this is a change from prior law that allowed punitive damages in cases of oppression, fraud, or malice, actual or presumed]. Defines actual malice. If jury trial, jury to determine amount of damages in immediate, separate proceeding after finding of liability. Jury award to be reviewed by judge, who can increase or decrease jury award. Specifically provides that insurance coverage does not extend to punitive damages unless expressly included in the insurance contract (opposite of prior case law that provided that punitive damages are covered by

insurance unless expressly excluded). (Eff. Oct. 1, 1987, and applies to claims arising after Oct. 1, except that civil procedure provisions regarding jury determination of damages and judge review apply to trials that begin after Oct. 1, 1987, whether or not the claim arose after the effective date of this act).

- **HB 567 (Ramirez) Chapter 628:**

Requires jury awards in civil cases to be reduced by the amount of any payments received by the claimant from collateral sources such as Social Security payments, insurance benefits, etc. (Eff. Oct. 1, 1987)

- **HB 592 (Harp) Chapter 571:**

Defines conduct required by the implied covenant of good faith and fair dealing as being "honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade". (Eff. July 1, 1987)

- **SB 48 (BROWN) Chapter 634:**

In any case in which \$100,000 or more in future damages are awarded, the judge may, in his discretion, order the periodic payment of future damages rather than a lump-sum award if the judge finds that such an award is in the best interests of the claimant. (Eff. Oct. 1, 1987)

- **SB 51 (BROWN) Chapter 505:**

Eliminates joint liability for any party found to be 50% or less negligent; such party is severally liable only, up to his determined degree of negligence. Any party who is found to be more than 50% negligent is jointly and severally liable (i.e., can be required to pay 100% of claimant's damages). (Eff. July 1, 1987)

- **SB 249 (BLAYLOCK) Chapter 228:**

Extends the termination date for limitation on governmental liability for damages in tort actions from June 30, 1987, to June 30, 1991. (Eff. March 27, 1987)

- **SB 375 (Bishop) Chapter 449**

Requires wrongful death actions (for example, an action for a wife's damages for the death of her husband) to be combined with survival actions (an action to recover for the deceased husband's pain and suffering before his death). Both actions must be brought at the same time and by the personal representative of the decedent's estate. No element of damages may be recovered more than once. (Eff. July 1, 1987)

- **SB 380 (PINSONEAULT) Chapter 466:**

Adopts textbook definition of products liability: a seller of a defective product is liable for injuries caused by it unless:

- a) the injured person assumed the risk of being injured by unreasonably using the product even though the defect was open and obvious; or
- b) unreasonable misuse of the product caused or contributed to the injury. Either affirmative defense could reduce recovery, based on principles of comparative negligence. (Eff. Oct. 1, 1987)

Limitations on Liability

In addition to the above-described bills, the 1987 Legislature passed 10 bills limiting or eliminating liability (i.e., granting immunity) to or for the following: landowners (injuries to recreationists); irrigation ditch employees; rodeo injuries; irrigation districts; weed districts; landowners (injuries to tourists); corporation directors; water service pipelines; officers, directors, and volunteers of non-profit corporations; and snowmobile area operators. The bill numbers are HB 42, HB 146, HB 219, HB 286, HB 478, HB 503, HB 748, SB 28, SB 49, and SB 139, which are, respectively, Chapters 209, 397, 508, 570, 516, 531, 559, 184, 437, and 440.

Tort Reforms Subject to Challenge

The tort reform measures discussed above were passed in response to the passage of Constitutional Initiative 30 on the November 1986 ballot. CI-30 amended the Montana Constitution to allow the Legislature to limit or prohibit recovery in civil cases. Before passage of CI-30, the Legislature's authority to limit recovery in civil cases was very limited because of the Supreme Court's decision in *Post v. State*, in which the Court applied a "strict scrutiny" test to such limits. The Montana Supreme Court's recent decision in *State ex rel. Montana Citizens for the Preservation of Citizen's Rights v. Waltermire*, invalidating the passage of CI-30 on technical grounds casts the validity of all 1987 tort reform measures into doubt. All the bills are subject to challenge based on the invalidity of CI-30. All the bills are the "law of the land" unless and until overturned by a court of law.

Cut Unnecessary Mailings, Notify your Correspondents

Although the request in *The Interim* last month generated some results, the Legislative Council is still receiving a considerable volume of unforwardable mail addressed to legislators.

If you received publications or mail other than first class at the Capitol during the session and have not asked that the mailings stop or be redirected to your permanent address, that mail is going into the waste basket here.

It costs money for your home town publisher or other correspondent to send material that lands in the round file. They would appreciate reminders to discontinue mailing to you at Helena.

And the Council staff won't complain about a reduction in mail volume.

Recent Agency Publications

Legislative Council

- State Requirements Concerning Payment of the Montana Minimum Wage to Restaurant Employees
- Legal Memorandum: Legislative Prerogatives Concerning Constitutional Amendments Proposed by Initiative or Referendum.

LEGISLATIVE INTERIM CALENDAR
AUGUST

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
						1
2	3	4	5	6	7	8
						15
9	10	11	12	13	14	
	NO AUGUST MEETINGS SCHEDULED					
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

*ALL MEETINGS ARE SUBJECT TO CHANGE

LEGISLATIVE INTERIM CALENDAR SEPTEMBER

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		1	2	3	4	5
	7 LABOR DAY	8	9	10 ---- EOC - Water Policy --- Rev. Oversight Rm. 104 Coal Tax Overs. Rm. 108	11	12 LEG. COUNCIL
13	14 -----EOC on HJR 49-----	15	16	17	18 LEG. AUDIT COMM. Rm. 104 LFA-Rm. 108	19 LFA-Rm. 104
20	21	22	23	24	25	26
27	28	29	30			

*ALL MEETINGS ARE SUBJECT TO CHANGE

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